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NOVA SCOTIA COURT OF APPEAL

[Cite as: Hilton Canada Inc. v. S.N.C. Lavalin Inc. 2000 NSCA 41]

Glube, C.J.N.S.; Flinn and Cromwell, JJ.A.

BETWEEN:

HILTON CANADA INC., a body corporate and HILTON CANADA INTERNATIONAL HALIFAX INC., a body corporate	)	Stewart McInnes, Q.C. and Aiden J. Meade for the appellants
Appellants	)	
- and -	)	
S.N.C. LAVALIN INC.	)	Michael E. Dunphy and John A. Keith
Respondent	)	for the respondent
	)	Appeal heard: March 22, 2000
	)	Judgment delivered: March 22, 2000

THE COURT: Appeal dismissed per oral reasons for judgment of Cromwell, J.A.; Glube, C.J.N.S. and Flinn, J.A. concurring.

CROMWELL, J.A.: (Orally)

[1] In March of 1989, the appellants (whom I shall refer to as “Hilton”) invested in a hotel property in Halifax. Before doing so, they engaged a firm of engineers, Lalonde, Girouard, Letendre (whom I shall refer to as “the engineers”) to inspect the hotel to determine if it had major defects. The engineer’s report advised that while there were significant problems with the building’s exterior brickwork, there were no structural problems evident. The report did not recommend further investigation.

[2] Hilton’s investment in the hotel proceeded. A relatively short time afterward, it was discovered that there was a major structural defect in the building which required approximately $4 million to fix. Steel beams and columns had corroded to the point that there was concern the building would collapse.

[3] Hilton sued the engineers alleging that they had, negligently and in breach of contract, failed to detect the defect or, at least, to alert Hilton that further investigation was warranted. (The respondent had acquired Lalonde, Girouard, Letendre and was therefore named as defendant.) Scanlan, J. dismissed the action and Hilton appeals.

[4] With one exception, all of the arguments on appeal challenge the trial judge’s findings of fact.

[5] The trial judge found that a visual inspection would not have led a reasonably competent structural engineer to suspect a major structural defect. He concluded that,

based on the information available to the engineering community at the time, the engineers were not negligent in failing to recommend further investigation or in giving their opinion that no structural problem could be noticed during their inspection. Whether considered as a question of contract or negligence, the fundamental issue was answered by these findings.

[6] The trial judge reached these conclusions by applying correct legal principles and by making clear findings of fact which are supported by the evidence.

[7] Hilton submits that the trial judge erred in not referring in his reasons to certain evidence given in cross-examination by Mr. Bertrand or to the evidence of Messrs. Stephenson and Sillaste. The point concerning Mr. Stephenson's evidence was not pressed in oral argument, but was raised in Hilton's factum and we have considered this argument. The judge was not required to set out in his reasons a review of the testimony of every witness. We have reviewed the evidence referred to by Hilton and we do not find that the judge's failure to refer to it specifically in his reasons demonstrates any error. Mr. Bertrand's evidence does not, in our view, have the effect contended for by Hilton. Mr. Sillaste, an architect, did not alert the owner to the possibility of any serious structural problem even though he was in the owner's employ and had extensive involvement with the building beginning in the early 1980's, including knowledge of the extensive and ongoing exterior brick repairs which, it bears noting, were also well known to Hilton. Mr. Stephenson conceded that he had no knowledge of this sort of structural problem prior to 1990 and found no reference to it in the

engineering literature. None of this evidence provides a basis for thinking that there was any palpable or overriding error in the judge's findings of fact.

[8] Hilton submits in its factum that the trial judge erred in refusing to grant leave to Hilton to admit certain portions of two expert reports which were filed late. This is a discretionary decision. It was based on proper principles and did not occasion an injustice.

[9] No basis for appellate intervention has been shown and the appeal is dismissed. Costs will be in the amount of $5,000.00 inclusive of disbursements.

Cromwell, J.A.

Concurred in:

Glube, C.J.N.S.

Flinn, J.A.